

# Public Utility Commission of Texas

7800 Shoal Creek Boulevard  
Austin, Texas 78757-1098  
512/458-0100 • (Fax) 458-8340

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Commissioner

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April 20, 1995

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Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RE: Petition for Rulemaking by MFS Communications Company, Inc. In the Matter of:  
Unbundling of Local Exchange Carrier Common Line Facilities

Dear Secretary:

Enclosed for filing are an original and nine copies of the Public Utility Commission of Texas' reply comments in response to Petition for Rulemaking by MFS Communications Company, Inc. In the Matter of: Unbundling of Local Exchange Carrier Common Line Facilities, RM-8614.

In accordance with the FCC rules, a copy of the reply comments has been provided to MFS Communications Company, Inc. and to the National Association of Regulatory Utility Commissioners. A copy of the Certificate of Service is attached.

Thank you for your assistance.

Sincerely,

Rowland L. Curry, P.E.  
Director  
Telephone Utility Analysis Division

Enclosures

cc: MFS Communications Company, Inc.  
National Association of Regulatory Utility Commissioners

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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**APR 21 1995**

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In the Matter of

Unbundling of Local Exchange  
Carrier Common Line Facilities

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RM-8614

**DOCKET FILE COPY ORIGINAL**

**REPLY COMMENTS OF  
THE PUBLIC UTILITY COMMISSION OF TEXAS**

7800 Shoal Creek Blvd.  
Austin, Texas 78757  
(512)458-0100

April 18, 1995

## **EXECUTIVE SUMMARY**

The Public Utility Commission of Texas ("PUCT") believes that it is both inappropriate for the FCC to preempt the states on the issue of the unbundling of the local loop and premature for the FCC to act on this issue. Therefore, the PUCT does not support MFS Communications Company Inc.'s ("MFS's") Petition for Rulemaking in the Matter of Unbundling of Local Exchange Carrier Common Line Facilities and asks that the FCC not continue with this proceeding at this time. Currently, the local loop is not unbundled in Texas; however, the issue has been raised and the PUCT has determined an appropriate timetable for resolving the issue in Texas. The PUCT believes that the states should be free to allow competition for local exchange service in their local jurisdictions without the fear that by doing so, they have subjected themselves to preemption on the important policy decision of the unbundling of the local loop. Further, the PUCT believes that it is premature for the FCC to act on the issue of the unbundling of the local loop because this issue is currently being considered at the state level and because the issue is undergoing legislative debate on the federal level.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of

Unbundling of Local Exchange  
Carrier Common Line Facilities

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RM - 8614

**REPLY COMMENTS OF  
THE PUBLIC UTILITY COMMISSION OF TEXAS**

**I. Introduction**

1. On March 7, 1995, MFS Communications Company, Inc. ("MFS") filed with the Federal Communications Commission ("FCC") a Petition for Rulemaking In The Matter of Unbundling of Local Exchange Carrier Common Line Facilities ("Petition"). On March 10, 1995, the FCC issued Report No. 2061 regarding the filing of statements opposing or supporting the Petition.

2. The PUCT agrees with the conclusion of the National Association of Regulatory Utility Commissioners ("NARUC") that the FCC should reject MFS's requests for proceedings to mandate local loop unbundling and interconnection standards. The following reply comments represent the views of the Public Utility Commission of Texas ("PUCT").

## **II. Summary of MFS's Petition**

3. In its Petition, MFS asks "the FCC to adopt rules promptly requiring the Tier 1 LECs (except NECA pool members) to provide the common line element of interstate switched access service (that is, the 'local loop') on an unbundled basis, at cost-based rates, to state-certified competing providers of such service."<sup>1</sup> MFS also asks that the FCC adopt voluntary guidelines for the pricing of unbundled loops.<sup>2</sup>

4. Specifically, MFS asks that the FCC adopt rules requiring Tier 1 LECs (except NECA panel members) to:

- (1) make available unbundled loops in any study area in which the state has authorized local exchange competition;
- (2) permit interconnection to such loops via tariffed expanded interconnection arrangements consistent with those for special and switched access;
- (3) comply with uniform minimum technical criteria so that both incumbents and new entrants can be assure (sic) of compatibility between their networks; and
- (4) prohibit LECs from charging more for the interstate component of unbundled loops than they charge end users for the same service.<sup>3</sup>

5. MFS emphasizes that the rules it proposes would apply only in those areas where local exchange competition has been authorized by State law or regulation

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<sup>1</sup> Petition, Page i.

<sup>2</sup> Petition, Page 50.

<sup>3</sup> Petition, Page 50.

and would permit interconnection to unbundled loops only by entities authorized under State law to provide such service. MFS notes that this restriction is made necessary by the fact that a "common line," by definition, is one that carries both interstate access and local exchange traffic, and the FCC has no authority to preempt State laws and regulations governing the provision of local exchange service.<sup>4</sup>

### **III. PUCT History of the Issue of Unbundling of the Local Loop**

6. The issue of the unbundling of the local loop was first raised by MFS at the PUCT in a petition for rulemaking filed in January, 1993.<sup>5</sup> In February, 1993, the PUCT denied MFS's petition due to insufficient information as it related to two aspects of the petition, including "the unbundling of services offered by local exchange companies." The PUCT indicated a preference for dealing with the issues raised in the petition through a sequence of rulemaking proceedings and directed the General Counsel to develop a timetable for addressing the issues raised in the petition, including the unbundling issue.

7. The General Counsel recommended addressing the issues of unbundling and resale of local exchange service following the completion of projects designed to determine the appropriate costing and pricing for LEC services. Further, the General Counsel recommended that it would not be appropriate to unbundle local exchange

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<sup>4</sup> Petition, Page 35.

<sup>5</sup> Project No. 11708, *Petition of Metropolitan Fiber Systems for Amendment to the PUC Substantive Rules to Promote Competition in Local Telephone Services.*

service before establishing the costs of that service. Projects regarding costing<sup>6</sup> and pricing<sup>7</sup> have been initiated and are ongoing at the PUCT. It is anticipated that the issue of unbundling of the local loop will be considered in a separate project after the costs for local exchange service are established.

8. In July, 1994, the issue of unbundling of the local loop was raised again when an affiliate of MFS, MFS Intelenet of Texas, Inc., filed with the PUCT an application for a Certificate of Convenience and Necessity.<sup>8</sup> It was also raised in November, 1994, when Teleport Communications Dallas and Teleport Communications Houston, Inc. filed an application for a Certificate of Convenience and Necessity.<sup>9</sup> These two contested cases are currently pending before PUCT Administrative Law Judges. The PUCT has not yet ruled upon any of the issues of fact, law, or policy presented in these applications. These Reply Comments should not be taken as an indicator of any future PUCT rulings in these contested cases on any issues in those cases including the matter of unbundling of the local loop.

9. In summary, the local loop is not unbundled in Texas; however, the issue has been raised and the PUCT has determined an appropriate timetable for resolving the issue in Texas. The PUCT is pursuing projects regarding the costing and

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<sup>6</sup> Project Nos. 12475 & 12481, *Application of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of Workplans Pursuant to Subst. R. 23.91.*

<sup>7</sup> Project No. 12771, *Pricing Rule.*

<sup>8</sup> Docket No. 13282, *Application of MFS Intelenet of Texas, Inc. for a Certificate of Convenience and Necessity to Operate as a Local Exchange Company in the Areas Served by Southwestern Bell Telephone Company and GTE Southwest, Inc. in Harris, Dallas, Collin, Tarrant, Bexar, Travis, and El Paso Counties.*

<sup>9</sup> Docket No. 13655, *Application of Teleport Communications Dallas and Teleport Communications Houston, Inc. for a Certificate of Convenience and Necessity in the Areas Served by Southwestern Bell Telephone Company and GTE Southwest, Inc. in the Counties of Harris, Galveston, Montgomery, Brazoria, Dallas, Tarrant, Collin, and Denton.*



pricing for LEC services. It is anticipated that the issue of unbundling of the local loop will be considered in a separate project after the costs for local exchange service are established.

#### **IV. PUCT's Response to MFS's Petition**

10. The PUCT believes that it is both inappropriate for the FCC to preempt the states on the issue of the unbundling of the local loop and premature for the FCC to act on this issue. Therefore, the PUCT does not support MFS's Petition and asks that the FCC not continue with this proceeding at this time.

##### **A. It is Inappropriate for the FCC to Preempt the States Regarding Unbundling of the Local Loop**

11. The PUCT believes that it is inappropriate for the FCC to preempt the states regarding the issue of the unbundling of the local loop. The PUCT believes that the unbundling of the local loop is a policy issue to be resolved by the states because the states' regulatory authorities are better able to understand and respond to the unique local circumstances in creating a policy that addresses unbundling, while protecting the public interest.

12. MFS's Petition asks the FCC to adopt rules that would make available unbundled loops in any study area in which the state has authorized local exchange competition. Although MFS does not expressly request preemption of state action, it appears that these rules would require any state which has authorized local exchange

competition to unbundle the local loop as well, and thus these rules would appear to preempt the state on this issue. Mr. Royce J. Holland, MFS President and Chief Operating Officer, has suggested "It would be 'counterintuitive' for those states [which have authorized local exchange competition] to oppose a policy of unbundling local loops to achieve competition."<sup>10</sup> Apparently, MFS believes that any state which has authorized local exchange competition has already unbundled the local loop or must unbundle the local loop.

13. The PUCT believes that regulation of local exchange service has historically been within the state jurisdiction and that it is inappropriate for the FCC to preempt the states on the policy issue of the unbundling of local exchange service. If the FCC adopts the policy that is requested by MFS in its Petition, states which allow local exchange competition would be required to unbundle local exchange service, and therefore, those states would be preempted from making any policy decisions regarding when and under what conditions the incumbent LECs should be required to unbundle their local exchange service. If this policy is adopted by the FCC, it would seem that states which do not currently allow local exchange competition would have two options. First, a state could allow local exchange competition, and therefore, be preempted on the decision to unbundle the local loop. Or, to prevent being preempted by the FCC on the state's decision to unbundle the local loop, a state could simply delay the decision to allow local exchange competition until that state addressed the unbundling of the local loop. The latter option would seem to be an unintended result of the policy that MFS is requesting.

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<sup>10</sup> *Telecommunications Reports*, March 13, 1995, Page 3.

14. Rather than effectively preempting the states, as MFS requests, the FCC should recognize the state regulatory authority's ability to recognize and respond to state specific fact situations that may affect the need for unbundling as an element of competitive entry into the local exchange market. The availability of unbundled local exchange service, the timing of its implementation, and any conditions that should apply to its availability are matters that can significantly affect each state's efforts to address the public interest within its borders. The state regulatory authorities are better able to understand and respond to the unique local circumstances in creating a policy that addresses unbundling, while protecting the public interest. Some states may determine, as New York has done, that issues of unbundling and competitive entry are intertwined and that the time for unbundling is now. Others may determine that the issues of unbundling and competitive entry are separate policy questions and that it is important to first resolve the issue of the appropriate costing of local exchange service before attempting to unbundle the service. The PUCT believes that prior to the FCC setting a nationwide policy regarding unbundling of the local loop, it is important that the FCC use the states as regulatory laboratories to explore and study the issue. The experience gained from allowing varying state treatments of the local loop will assist the FCC in determining both whether a national policy is even needed, and, if so, the optimal manner in which to address unbundling of the local loop. Further, the PUCT believes that the states should be free to allow competition for local exchange service in their local jurisdictions without the fear that by doing so,

they have subjected themselves to preemption on the important policy decision of the unbundling of the local loop.

**B. It is Premature for the FCC to Act on Unbundling of the Local Loop**

15. The PUCT believes that it is premature for the FCC to act on the issue of the unbundling of the local loop because this issue is currently being considered at the state level and because the issue is undergoing legislative debate on the federal level.

16. The PUCT believes that before action is taken by the FCC, the states should be given an opportunity to resolve the issue of unbundling of the local loop. As noted in Paragraph 7 of these Reply Comments, the PUCT anticipates that the issue of unbundling of the local loop will be considered in a separate project after the costs for local exchange service are established. Also, the Texas Legislature is considering a bill which would require an incumbent local exchange company to unbundle, at a minimum, its network to the extent now ordered by the FCC. The bill would also require the PUCT to hold a hearing and adopt an order on the issue of requiring further unbundling of local exchange company services.<sup>11</sup> Thus, if passed, the bill would provide further assurance to MFS that the issue will be resolved in the near future.

17. Pending federal legislation includes unbundling of the local loop as part of interconnection requirements.<sup>12</sup> If this legislation passes, the FCC would be

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<sup>11</sup> Tex. H. B. 2128, 74th Leg. R.S., Committee Substitute Section 41, Adding Subtitle J.

<sup>12</sup> S. 652, 104th Congress, 1st Sess., Section 101.

required to promulgate rules within six months to implement the requirements. The final legislation could provide additional important guidance from the legislature concerning the nature and extent of local loop unbundling. In absence of this legislative direction, at a time when such direction may be forthcoming, the PUCT believes that the FCC should not act on this matter at this time.

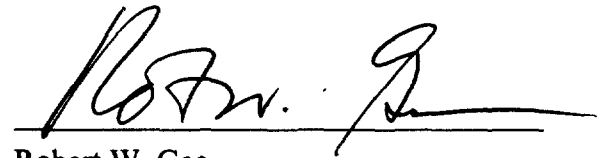
## **V. Conclusion**

18. The PUCT believes that it is both inappropriate for the FCC to preempt the states on the issue of the unbundling of the local loop and premature for the FCC to act on this issue. Therefore, the PUCT does not support MFS's Petition and asks that the FCC not continue with this proceeding at this time. Currently, the local loop is not unbundled in Texas; however, the issue has been raised and the PUCT has determined an appropriate timetable for resolving the issue in Texas. The PUCT believes that the states should be free to allow competition for local exchange service in their local jurisdictions without the fear that by doing so, they have subjected themselves to preemption on the important policy decision of the unbundling of the local loop. Further, the PUCT believes that it is premature for the FCC to act on the issue of the unbundling of the local loop because this issue is currently being considered at the state level and because the issue is undergoing legislative debate on the federal level.

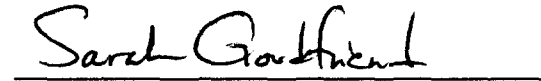
Respectfully submitted,

Public Utility Commission of Texas  
7800 Shoal Creek Blvd.  
Austin, Texas 78757

April 18, 1995

A handwritten signature in dark ink, appearing to read "Robert W. Gee", written over a horizontal line.

Robert W. Gee  
Chairman

A handwritten signature in dark ink, appearing to read "Sarah Goodfriend", written over a horizontal line.

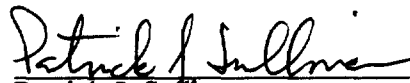
Sarah Goodfriend  
Commissioner

Certificate of Service

I hereby certify that the foregoing Reply Comments of the Public Utility Commission of Texas were served this 20th day of April, 1995, by first class mail, postage pre-paid, upon the following parties:

Andrew D. Lipman  
Russell M. Blau  
Mary C. Albert  
Eric J. Branfman  
Swidler & Berlin, Chartered  
3000 K Street, N.W.  
Washington, D.C. 20007

Paul Rodgers  
Charles D. Gray  
James Bradford Ramsay  
National Association of Regulatory Utility Commissioners  
1102 ICC Building  
Post Office Box 684  
Washington, D.C. 20044



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Patrick J. Sullivan  
Assistant General Counsel  
Public Utility Commission of Texas